

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ARTHUR NEWMARK, M.D.,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
TOGO D. WEST, JR., SECRETARY, UNITED STATES DEPARTMENT OF VETERANS AFFAIRS, TRACY BARRETT, in her official capacity as Acting Chief of Staff, and in her individual capacity, MICHAEL BERKWITS, in his official capacity as Director of the Emergency Room, and in his individual capacity, EARL FALLAST, JOHN DOE Nos. 1-5; and the PHILADELPHIA VETERANS AFFAIRS MEDICAL CENTER,	:	NO. 99-5798
Defendants.	:	

DUBOIS, J.

February 2, 2001

MEMORANDUM

Presently before the Court is Plaintiff's Petition for an Award of a Reasonable Attorney's Fee (Document No. 22, filed Oct. 13, 2000), Memorandum of Law in Support of Plaintiff's Petition (Document No. 23, filed Oct. 13, 2000), Memorandum of Law in Support of Defendant's Response to Plaintiff's Attorney Fee Petition (Document No. 24, filed Oct. 27, 2000), and letter from plaintiff's attorney dated November 2, 2000.

For the reasons set forth below, plaintiff's Petition will be granted in part and denied in part, and plaintiff will be awarded attorney's fees in the amount of \$11,909.75.

I. BACKGROUND

Plaintiff, Arthur Newmark, M.D., was employed as a physician at the Philadelphia Veterans Affairs Medical Center ("PVAMC"). His employment at PVAMC was terminated on

December 5, 1997.

On November 19, 1999, Dr. Newmark filed a Bivens action against Togo D. West, Jr., Secretary of the United States Department of Veterans Affairs, Tracy Barrett, in her official capacity as Acting Chief of Staff of PVAMC, Michael Berkwits, in his official capacity as Director of the Emergency Room of PVAMC, and in his individual capacity, Earl Fallast, then the director of PVAMC, and PVAMC itself. In the Complaint (Document No. 1), plaintiff alleged a violation of his right to procedural due process as guaranteed by the Fifth Amendment (Count I), a violation of his right to free speech as guaranteed by the First Amendment (Count II), and a violation of his right to substantive due process as guaranteed by the Fifth Amendment (Count III), all stemming from his termination. Counts I, II, and III (the “Bivens claims”) were alleged against all defendants.

On March 31, 2000, plaintiff filed an Amended Complaint (Document No. 5), adding a claim for age discrimination -- termination in violation of the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq. (“ADEA”) (Count IV), a claim for retaliation -- failure to rehire in violation of the ADEA (Count V), and a claim for failure to rehire in violation of the ADEA (Count VI). The ADEA claims in Counts IV, V, and VI were asserted against one defendant, PVAMC.

On September 29, 2000, plaintiff filed an acceptance of an Offer of Judgment in the amount of \$297,154.00 against Togo West, Secretary of the Department of Veterans Affairs, with respect to the ADEA claims (Counts IV, V, and VI) (Document No. 16, filed September 29, 2000). Pursuant to the terms of the Offer of Judgment, plaintiff dismissed Counts I, II, and III, the Bivens claims (Document No. 17, filed Sept. 29, 2000).

The Offer of Judgment provides, in relevant part, for payment of \$297,154.00 in back pay to Dr. Newmark, which “includes costs accrued to date under the ADEA. In addition, attorney’s fees incurred to date, to be determined by the court under the Equal Access to Justice Act, for the Age Discrimination in Employment Act claim, will be paid. This offer is being made pursuant to Rule 68 of the Federal Rules of Civil Procedure, contingent on your client’s willingness to dismiss all claims against all defendants.” Stated differently, the Offer of Judgment provided for a settlement of the ADEA claims and as a part of that settlement, plaintiff was required to dismiss both the Bivens claims and the ADEA claims.

II. DISCUSSION

In the Petition, plaintiff requests an award of attorney’s fees in the amount of \$38,788.00.¹ That sum covers payment for the time two attorneys and one paralegal expended on the entire case, including the Bivens action, billed at their normal hourly rates. Defendant West asserts that he should only be required to pay an attorney’s fee of \$11,162.50² for attorneys’ time expended on the ADEA claims, not paralegal time, and not time expended on the Bivens action,

¹ Plaintiff justifies his request as follows:

<u>Name</u>	<u>Title</u>	<u>Hours</u>	<u>Hourly Rate</u>	<u>Total</u>
Alice W. Ballard	Attorney	77.2	\$350.00	\$27,020.00
Ralph Lamar	Attorney	41.6	\$250.00	\$10,400.00
Merry Guben	Paralegal	14.4	\$95.00	<u>\$ 1,368.00</u>
				\$38,788.00.

² Defendant West arrives at his figure as follows:

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Alice W. Ballard	57.6	\$125.00	\$7,200.00
Ralph Lamar	31.7	\$125.00	<u>\$3,962.50</u>
			\$11,162.50.

billed at a rate of \$125 per hour, as provided under the Equal Access to Justice Act, 28 U.S.C. § 2412 (“EAJA”).

In cases brought against the government, a fee award is governed by the EAJA, except as otherwise specifically provided by statute. 28 U.S.C. § 2412(a)(1). The EAJA provides in part that a “court may award reasonable fees and expenses of attorneys, in addition to costs . . . to the prevailing party in any civil action brought by or against the United States or any agency or any official of the United States acting in his or her official capacity The United States shall be liable for such fees and expenses to the same extent that any other party would be liable under the common law or under the terms of any statute which specifically provides for such an award.” 28 U.S.C. § 2412(b).

The question of whether attorney’s fees for ADEA claims against the United States are allowed has not yet been addressed in this circuit. Plaintiff asserts that the ADEA permits recovery of attorney’s fees by incorporating § 216(b) of the Fair Labor Standards Act (FLSA), which expressly permits claimants in the private sector to recover attorney’s fees against their employers. See 29 U.S.C. § 626(b); Craig v. O’Leary, 870 F. Supp. 1007, 1009 (D. Col. 1994). Some circuits have held that the United States is not liable for attorney’s fees under the ADEA. See Craig, 870 F. Supp. at 1009; Lewis v. Federal Prison Indus., Inc., 953 F.2d 1277, 1281-82 (11th Cir. 1992) (quoting Lehman v. Nakshian, 453 U.S. 156, 101 S. Ct. 2698, 2705, 69 L. Ed. 2d 548 (1981)); Nowd v. Rubin, 76 F.3d 25, 28 (1st Cir. 1996); Lewis v. Federal Prison Industries, Inc., 953 F.2d 1277, 1282 (11th Cir. 1992); Palmer v. General Services Admin., 787 F.2d 300, 302 (8th Cir. 1986) (citing Lehman to support denial of attorney fees incurred in pursuit of ADEA claim at administrative level). Other circuits have disagreed and allowed recovery of

attorney's fees in an ADEA claim against the government. See Smith v. Office of Pers. Mgmt., 778 F.2d 258, 264 (5th Cir. 1985) (authorizing fees without discussion); Johnson v. Lehman, 679 F.2d 918, 919 (D.C. Cir. 1982) (same). See also Craig v. O'Leary, 870 F. Supp. at 1009 (citing district courts which have authorized attorney fees in ADEA cases against the federal government).

This Court need not decide whether plaintiff is entitled to attorney's fees under the ADEA because the Offer of Judgment specifically provides for payment of such fees — the Offer of Judgment states: “attorney's fees incurred to date, to be determined by the court under the Equal Access to Justice Act, for the Age Discrimination in Employment Act claim, will be paid.” An offer of judgment made pursuant to Rule 68 is generally interpreted according to contract principles. See Gavoni v. Dobbs House, Inc., 169 F.2d 1071, n. 1 (7th Cir. 1999) (“Courts generally rely on contract principles to interpret Rule 68 offers.”); Henderson v. Sterling, Inc., 139 F.3d 889, **4 (unpublished table opinion) (citing Goodheart Clothing Co., Inc. v. Laura Goodman Enters., Inc., 962 F.2d 268, 272 (2d Cir. 1992); Erdman v. Cochise County, Ariz., 926 F.2d 877, 880 (9th Cir. 1991); Mallory v. Eyrich, 922 F.2d 1273, 1279 (6th Cir. 1991)).

In light of the Offer of Judgment, the issues presented by the Petition are two in number: (1) is plaintiff entitled to attorney's fees on all claims, including the Bivens claims; and (2) what hourly rate is applicable to the time expended?

A. Plaintiff's Entitlement to Attorney's Fees

Defendant West argues that no attorney's fees should be awarded for the Bivens claims on the ground that plaintiff is not the prevailing party on those claims because, as a condition of the Offer of Judgment, the Bivens claims were dismissed. Plaintiff claims that he is the

“prevailing party,” and is therefore entitled to attorney’s fees under the EAJA for all time expended on the case. As part of that argument, plaintiff asserts that the language of the Offer of Judgment is ambiguous, and that extrinsic evidence should be admitted to determine the meaning of the Offer.

For a plaintiff to be considered a “prevailing party,” he must show that he “achieved relief, and that there was a causal connection between the litigation and the relief.” Watson v. Southeastern Pa. Transp. Auth., 207 F.3d 207, 224 (3d Cir. 2000) (citing Wheeler by Wheeler v. Towanda Area Sch. Dist., 950, F.2d 128, 131 (3d Cir. 1991) (“[A]s long as a plaintiff achieves some of the benefit sought in a lawsuit, even though the plaintiff does not ultimately succeed in securing a favorable judgment, the plaintiff can be considered the prevailing party for purposes of a fee award.”); also citing Clark v. Township of Falls, 890 F.2d 625, 627 (3d Cir. 1989) (“[I]f plaintiffs could establish that their suit was the catalyst for the changes, they were entitled to prevailing party status despite the fact that the district court had ruled against them.”)).

In this case, the Court need not determine whether plaintiff was a “prevailing party” for purposes of the EAJA because any award of attorney’s fees is governed by the Offer of Judgment. As the Offer of Judgment is a contract, the decision on attorney’s fees turns on issues of contract law.

“When a written contract is clear and unequivocal, its meaning must be determined by its contents alone.” Mellon Bank, N.A. v. Aetna Business Credit, Inc., 619 F.2d 1001, 1009 (3d Cir. 1980). Only when there is ambiguity in the writing may the court look outside of the agreement. Merrill v. Manufacturers Light & Heat Co., 409 Pa. 68, 185 A.2d 573, 576 (Pa. 1962); see also Surnamer v. RCN Telecom Servs. of Pa., Inc., 1999 WL 171455 (E.D. Pa. Mar. 26, 1999).

The language of the Offer of Judgment is absolutely clear – “attorney’s fees incurred to date, to be determined by the Court under the [EAJA], for the Age Discrimination in Employment Act claim, will be paid.” Since the Offer of Judgment is clear and unequivocal, the Court will only look to the language of the Offer in deciding the issue of attorney’s fees.

The Offer provides that an attorney’s fee for work on the ADEA claims — Counts IV, V, and VI — is to be paid. The Offer does not provide for payment of any attorney’s fees for the Bivens claims. Accordingly, the Court will only award attorney’s fees for time expended on the ADEA claims.

B. Number of Hours Expended on the ADEA Claims

The Court next turns to the task of determining what hours were expended by plaintiff’s counsel on the ADEA claims.

1. Alice W. Ballard, Esq.

Plaintiff submitted time records which indicate that Ms. Ballard expended 77.2 hours on plaintiff’s case. The government challenges 19.6 of these hours as work relating to the Bivens claims. It should be noted that the original Complaint was based entirely on Bivens. It was not until the Amended Complaint was filed on March 31, 2000, that ADEA claims were added to the case.

After reviewing the time sheets of Ms. Ballard, the Court determines that the following hours should be excluded from the award because they pertain only to the Bivens claims:

<u>Date</u>	<u>Services Rendered</u>	<u>Time</u>
12/22/97	Meet with Arthur re: due process claim.	1.2
1/21/98	Talk with Lois Trapp about due process.	0.3
3/24/98	Due process research (Lei v. VA - 1997 U.S. Dist. LEXIS	0.4

	1575 E.D. Pa.).	
7/16/98	Edit statement of witnesses for Botello; amend Fordell complaint; talk with Arthur; correspondence.	0.9
9/9/98	Research on due process (<u>Coleman</u> 147 F.3d 751)	0.2
10/31/99	Talk with Arthur about factual statement for complaint.	0.2
11/18/99	Review theory of case with Ralph.	0.3
11/19/99	Read, edit complaint; get complaint filed.	2.2
5/17/00	Telephone conference pretrial; settlement talk with Bricklin; research on Bivens action.	1.2
5/30/00	Talk with Arthur about government's <u>Bivens</u> motion and settlement issues.	0.4
6/5/00	Meet with Arthur to talk about <u>Bivens</u> response and prep for settlement meeting.	1.8
8/1/00	Work on response to Bivens motion (<u>Schweiker</u>).	1.0
8/2/00	Work on Bivens issues.	4.5
8/3/00	Work on Bivens issues.	3.8
8/4/00	Bivens memo.	1.5
8/21/00	Research on <u>Bivens</u> (<u>Collins v. Bender</u> CA9); talk with Hope Comisky.	0.2
8/26/00	Research on DP and civil conspiracy (<u>Borynowski</u> again); and Bivens appeal issue (in re: <u>Montg County</u> 215 F.3d).	0.3
TOTAL		<u>20.4</u>

The Court finds that Ms. Ballard expended 20.4 hours on the Bivens claims as detailed above. That time will be excluded from the fee award. Therefore, plaintiff may recover for 56.8 hours of Ms. Ballard's time expended on the ADEA claims.

2. Ralph E. Lamar, IV

Plaintiff submitted time records which disclose that Mr. Lamar expended 41.6 hours working on this case. The government asserts that 9.9 hours were expended on the Bivens claims, or on matters not relating to the ADEA claims.

Defendant West challenges, inter alia, 0.5 hours expended, in five separate 0.1 hour blocks, on letters and telephone calls from "ISI." Plaintiff provided no explanation of "ISI," or whether this time was expended on the Bivens or the ADEA claims.

The Third Circuit has held that

“a fee petition should include ‘some fairly definite information as to the hours devoted to various general activities, e.g., pretrial discovery, settlement negotiations, and the hours spent by various classes of attorneys, e.g., senior partners, junior partners, associates.’ However, ‘it is not necessary to know the exact number of minutes spent nor the precise activity to which each hour was devoted nor the specific attainments of each attorney.’”

Washington v. Philadelphia County Court of Common Pleas, 89 F.3d 1031, 1037-38 (3d Cir. 1996) (citing Rode v. Dellarciprete, 892 F.2d 1177, 1190 (3d Cir. 1990) (citing Lindy Bros. Builders, Inc. of Phila. v. American Radiator & Standard Sanitary Corp. 487 F.2d 161, 167 (3d Cir. 1973))).

This challenged time — 0.5 hours — was expended in November and December 1999, and early February 2000, around the time the initial Complaint was filed — several months before the Amended Complaint asserting the ADEA claims was filed. Accordingly, in the absence of information required to determine whether any such time was, in fact, expended on the ADEA claims, the Court will disallow such time.

After reviewing the time sheets submitted by the plaintiff, the Court determines that the following additional hours were expended by Mr. Lamar on the Bivens claims and should be excluded:

<u>Date</u>	<u>Services Rendered</u>	<u>Time</u>
2/12/99	Reviewing file/drafting complaint.	1.1
11/12/99	Drafting complaint.	0.4
11/18/99	Drafting complaint.	4.0
11/19/99	Preparing complaint.	3.3
11/29/99	Preparing Summons for Service of Complaints.	0.3
12/29/99	Read and review Berkwits Waiver of Service form.	0.1
12/29/99	Drafting New Waiver of Service.	0.2
2/1/00	Read and review Defendants Motion for Extension of Time.	<u>0.1</u>
TOTAL		9.5

The Court finds that Mr. Lamar expended 10.0 hours on the Bivens claims, or matters not related to the ADEA claims, as detailed above. That time will be excluded from the fee award. Therefore, plaintiff may recover for 31.6 hours of Mr. Lamar's time expended on the ADEA claims.

3. Merry Guben

Plaintiff submitted time records which disclose that Merry Guben, a paralegal, expended 14.45 hours on the case. Defendant West contends that those hours are not recorded with sufficient specificity "to allow opposing party or this court to determine if the hours reflect [sic] therein were reasonable or if they were related to the Bivens claim or the ADEA claim." (Defendant West's Memorandum at 12).

A petition for attorney's fees must be "specific enough to allow the district court to determine if the hours claimed are unreasonable for the work performed." Washington v. Philadelphia Cty. Ct. of Common Pleas, 89 F.3d at 1037. When there is inadequate documentation of hours, the district court "may reduce the award accordingly." Id. Submissions in support of the petition must provide "enough information as to what hours were devoted to various activities and by whom for the district court to determine if the claimed fees are reasonable." Id. at 1038. This means that the fee petition should include "some fairly definite information as to the hours devoted to various general activities, e.g., pretrial discovery, settlement negotiations." Id. at 1037.

Defendant West argues that Ms. Guben's time sheets were not kept with enough specificity for the Court to determine what time, if any, was expended on the ADEA claims. The

Court disagrees with that position. The Court concludes that the 5.4 hours recorded for 1998, over two years before the filing of the Amended Complaint which for the first time asserted ADEA claims, were expended on the claims asserted in the original Complaint — the Bivens claims. Those 5.4 hours will be excluded. However, while it is correct that some of the remaining time entries for Ms. Guben, all for the year 2000, are ambiguous — the Court cannot determine with precision whether they relate to the ADEA or Bivens claims — because of the proximity in time to the assertion of the ADEA claims, and the fact that considerable time was expended on research on comparable verdicts, the Court will not disallow such time — 9.05 hours. An appropriate fee for such work by Ms. Guben will be awarded.

C. Hourly Rate

The Court now turns to the hourly rates at which plaintiff's attorney's fee award will be calculated. Plaintiff argues that he is entitled to recover at the usual hourly rate of his attorneys and paralegal — \$350 per hour for Ms. Ballard, \$250 per hour for Mr. Lamar, and \$95 per hour for Ms. Guben.³ Defendant West, however, asserts that any attorney's fee award should be capped by the EAJA, which limits any award to \$125 per hour.

The Offer of Judgment specifically provides for attorney's fees to be awarded under the EAJA. Accordingly, the Court will look to the language of the EAJA, which sets forth the rate at which attorney's fees may be awarded, for the hourly rate to be used in this case.

The EAJA provides in part that:

For the purposes of this subsection — (A) 'fees and other expenses' includes . . .

³The Court notes that in Attachment 5 to plaintiff's Memorandum of Law, plaintiff's December 3, 1997 fee agreement with Ms. Ballard, Ms. Ballard states that her fee is \$270 per hour and that her associate's fee is \$225 per hour, subject to annual increases.

reasonable attorney fees (The amount of fees awarded under this subsection shall be based upon prevailing market rates for the kind and quality of the services furnished, except that . . . (ii) attorney fees shall not be awarded in excess of \$125 per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee.).

28 U.S.C. § 2412(d)(2)(A).

Plaintiff asserts that under the EAJA, the award for attorney's fees against the government in this matter should be the same as an award under the ADEA against a private employer, rather than the statutory rate of \$125 per hour. To this end, plaintiff argues that there are both permissive and mandatory provisions relating to hourly rates for attorneys in the EAJA, and that the Court is authorized to award fees at the prevailing market rates. Accordingly, to plaintiff, the permissive provision is § 2412(b), which states

a court may award reasonable fees and expenses of attorneys . . . to the prevailing party in any civil action brought . . . against the United States The United States shall be liable for such fees and expenses to the same extent that any other party would be liable under the common law or under the terms of any statute which specifically provides for such an award.

28 U.S.C. § 2412(b) (emphasis added). Plaintiff argues that § 2412(b) is permissive because of the use of the term “may”; in contrast, he points to § 2412(d)(1), which he characterizes as mandatory because of the use of the term “shall” — “a court shall award to a prevailing party other than the United States fees and expenses . . . unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.” 28 U.S.C. § 2412(d)(1) (emphasis added). It is plaintiff's position that he “is entitled to an award under the permissive provision of the statute,” relying on the aforesaid use of the terms “may”

and “shall” and citing two cases that have no bearing on his argument.⁴

The Court rejects plaintiff’s position on the issue of the hourly rate for attorneys in fee awards against the government under the EAJA. Section 2412 should not be read as having two separate and distinct sections with permissive and mandatory components, but instead must be read as a whole. The Third Circuit has held that “Congress has determined that attorney’s fees awarded under the EAJA are to be based upon ‘prevailing market rates,’ but that no fee may be awarded ‘in excess of [\$125] per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee.’” Dewalt v. Sullivan, 963 F.2d 27, 28-29 (3d Cir. 1992) (quoting 28 U.S.C. § 2412(d)(2)(A)).⁵ In determining a fee award, “first, a district court should assume that a fee award will be based on the prevailing market rates for comparable work. Second, in the ordinary case, if that prevailing market rate exceeds \$75⁶ per hour, the court should award only \$75 per hour, as the statute specifies.” Id. at 31 (Becker, J. dissenting). Otherwise stated, unless special circumstances are present, or unless the Court determines that an

⁴Plaintiff cites as support for his mistaken proposition that there is both a permissive mandatory aspect to the EAJA Craig v. O’Leary, 870 F. Supp. 1007 (D. Col. 1994), and Adamson v. Bowen, 855 F.2d 668 (10th Cir. 1998). Craig holds that “the United States has waived sovereign immunity for attorney fees under the ADEA,” and therefore a federal employee suing for discrimination may also collect attorney’s fees. 870 F. Supp. at 1010. Adamson stands for the proposition that the EAJA waived sovereign immunity of the United States for attorney’s fees when part of a Rule 11 sanction. 855 F.2d at 671-72. Neither of these cases give any credence to plaintiff’s position that absent special circumstances, the Court may depart from the statutory cap of \$125 per hour provided in the EAJA.

⁵Section 2412(d)(2)(A) formerly provided for a cap of \$75 per hour. This amount was raised to \$125 per hour by statute in 1996. Pub. L. 104-121, § 232(b)(1).

⁶See supra note 5.

increase in the cost of living justifies exceeding the \$125 per hour cap, the Court is not authorized to award attorney's fees at a rate in excess of \$125 per hour. Similarly, the Sixth Circuit held that "the \$75⁷ rate is a ceiling and not a floor." Chipman v. Secretary of Health & Human Svcs., 781 F.2d 545, 547 (6th Cir. 1986). See also 14A Charles Alan Wright, et al., Federal Practice and Procedure § 3660.1 (3d ed. 1998) ("The statute currently imposes a \$125 per hour cap on attorney fees, but the district court in its discretion may increase the fee above \$125 if a cost-of-living increase or special factor warrants such deviation.").

The Court concludes that the \$125 per hour limit on attorney's fees is applicable to all awards of such fees under the EAJA. The Court can award fees at a rate in excess of \$125 per hour only if the Court determines that an increase in the cost of living justifies exceeding the cap, or if special factors are present. Plaintiff has not argued that any of the special factors set forth in § 2412(d)(2)(A) are applicable in this case, or that an increase in the cost of living justifies exceeding the cap.

The Court will award attorney's fees to plaintiff at an hourly rate of \$125 for all time expended on the ADEA claims. The award for plaintiff's paralegal will be based on an hourly rate of \$95, the requested rate.

⁷See supra note 5.

III. COMPUTATION OF FEE AWARD — SUMMARY

The court will award the plaintiff \$ 11,947.75 for attorney's fees, computed as follows:

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Alice W. Ballard, Esq.	56.8	\$125.00	\$ 7,100.00
Ralph E. Lamar, IV	31.6	\$125.00	\$ 3,950.00
Merry Guben	9.05	\$ 95.00	<u>\$ 859.75</u>
TOTAL			\$ 11,909.75

An appropriate order follows.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ARTHUR NEWMARK, M.D.,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
TOGO D. WEST, JR., SECRETARY, UNITED STATES DEPARTMENT OF VETERANS AFFAIRS, TRACY BARRETT, in her official capacity as Acting Chief of Staff, and in her individual capacity, MICHAEL BERKWITS, in his official capacity as Director of the Emergency Room, and in his individual capacity, EARL FALLAST, JOHN DOE Nos. 1-5; and the PHILADELPHIA VETERANS AFFAIRS MEDICAL CENTER,	:	NO. 99-5798
Defendants.	:	

ORDER

AND NOW, this 2nd day of February, 2001, upon consideration of Plaintiff's Petition for an Award of a Reasonable Attorney's Fee (Document No. 22, filed Oct. 13, 2000), Memorandum of Law in Support of Plaintiff's Petition (Document No. 23, filed Oct. 13, 2000), Memorandum of Law in Support of Defendant's Response to Plaintiff's Attorney Fee Petition (Document No. 24, filed Oct. 27, 2000), and letter from plaintiff's attorney dated November 2, 2000, for the reasons set forth in the attached Memorandum, **IT IS ORDERED** that the plaintiff's Petition is **GRANTED IN PART** and **DENIED IN PART**, and plaintiff is **AWARDED** attorney's fees in the amount of \$11,909.75.

BY THE COURT:

JAN E. DUBOIS, J.